

(4) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) *Submission.* On or before the expiration of the time granted for negotiations, the parties or their counsel may:

(1) Submit the proposed agreement to the hearing examiner for his consideration; or

(2) Inform the hearing examiner that agreement cannot be reached.

(d) *Disposition.* In the event an agreement containing consent findings and an order is submitted within the time allowed therefor, the hearing examiner within 30 days thereafter shall accept such agreement by issuing his decision based upon the agreed findings.

#### § 1921.9 Prehearing conferences.

(a) Upon his own motion or the motion of the parties, the hearing examiner may direct the parties or their counsel to meet with him for a conference to consider:

(1) Simplification of the issues;

(2) Necessity or desirability of amendments to pleadings for purposes of clarification, simplification, or limitation;

(3) Stipulations, admissions of fact and of contents and authenticity of documents;

(4) Limitation of the number of expert witnesses; and

(5) Such other matters as may tend to expedite the disposition of the proceeding.

(b) The record shall show the matters disposed of by order and by agreement in such pretrial conferences. The subsequent course of the proceeding shall be controlled by such action.

### Subpart C—Hearing and Related Matters

#### § 1921.10 Appearances.

(a) *Representation.* The parties may appear in person or by counsel. The term “counsel” means a member in good standing of the bar of a Federal Court or of the highest court of any State or Territory of the United States.

(b) *Failure to appear.* In the event that a party appears at the hearing and no party appears for the opposing side,

the party who is present shall have an election to present his evidence in whole or such portion thereof sufficient to make a prima facie case before the hearing examiner. Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the hearing examiner’s decision and to file exceptions thereto.

#### § 1921.11 Postponement or change of place of hearing.

If in the judgment of the hearing examiner convenience or necessity so requires, he may postpone the time or change the place of the hearing.

#### § 1921.12 Hearing.

(a) *Order of proceeding; burden of proof.* Except as may be determined otherwise by the hearing examiner, counsel supporting the complaint shall proceed first at the hearing. The Assistant Solicitor of Labor in charge of trial litigation, supporting the complaint, shall have the burden of proof. The burden of proof shall be satisfied by a preponderance of the evidence.

(b) *Evidence—(1) In general.* The testimony of witnesses shall be upon oath or affirmation administered by the hearing examiner and shall be subject to such cross-examination as may be required for a full and true disclosure of the facts. The hearing examiner shall exclude evidence which is immaterial, irrelevant, or unduly repetitious.

(2) *Objections.* If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination or the failure to limit such scope, he shall state briefly the grounds for such objection. Rulings on all objections shall appear in the record. Only objections made before the hearing examiner may be relied upon subsequently in the proceeding.

(3) *Exceptions.* Formal exception to an adverse ruling is not required.

(c) *Official notice.* Official notice may be taken of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice and also concerning which the Department by reason of its functions is presumed to be expert: *Provided*, That the parties shall be given